

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TOBY J. MASSE,

Plaintiff,

vs.

ELDON VAIL, HAROLD CLARKE,  
DEVON SCHRUM, JEFFREY  
UTTECHT, MAGGIE MILLER-  
STOUT, LEE YOUNG, COUNSELOR  
WARNER, COUNSELOR PENROSE,  
GERMAINE BENSON, MICHAEL  
MEYERS, UNIT SUPERVISOR  
HEWSON and UNIT SUPERVISOR  
PROPECK,

Defendants.

NO. CV-08-164-RHW

ORDER DISMISSING ACTION WITH  
PREJUDICE

**1915(g)**

By Order filed November 20, 2008, the court granted Plaintiff until December 15, 2008, to file a Second Amended Complaint or to voluntarily dismiss. Plaintiff did not comply and he has filed nothing further in this action. Plaintiff, a prisoner at the Stafford Creek Corrections Center in Aberdeen, Washington, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

For the reasons set forth in the Second Order to Amend Complaint or Voluntarily Dismiss (Ct. Rec. 11), **IT IS ORDERED** this action is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

1 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a  
2 prisoner who brings three or more civil actions or appeals which are  
3 dismissed as frivolous or for failure to state a claim will be  
4 precluded from bringing any other civil action or appeal *in forma*  
5 *pauperis* "unless the prisoner is under imminent danger of serious  
6 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read  
7 the new statutory provisions under 28 U.S.C. § 1915. This dismissal  
8 of Plaintiff's complaint may count as one of the three dismissals  
9 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to  
10 file future claims.

11 IT IS SO ORDERED. The District Court Executive is directed to  
12 enter this Order, forward a copy to Plaintiff at his last known  
13 address, enter judgment, and close the file. The District Court  
14 Executive is further directed to forward a copy of this Order to the  
15 Office of the Attorney General of Washington, Criminal Justice  
16 Division.

17 DATED this 8<sup>th</sup> day of January 2009.

18 S/ Robert H. Whaley

19 ROBERT H. WHALEY  
20 CHIEF UNITED STATES DISTRICT JUDGE